THE CORPORATION AS A LEGAL ENTITY. By JAMES TREAT CARTER. Baltimore: M. CURLANDER. 1919. pp. xv, 239.

This study is an expanded essay which was originally presented as a thesis at the Law School of the University of Maryland on the subject, "The Extent to Which the Courts Will Disregard the Fiction of Corporate Existence and Deal with the Natural Persons Composing the Corporation". In Part I., the author undertakes to set forth the different theories in regard to the nature of the corporation, the application of the theories in determining the citizenship of the corporation, and the extent to which the courts disregard the corporate entity. In Part II., he considers the status of the corporation in Maryland Law, as settled in the decisions of its Court of Appeals.

The question as to the legal nature of the corporation has always been a fascinating one and it has excited among students and scholars as much interest and theorizing (much of it quite useless and unprofitable) as the authorship of Shakespeare's plays or the mental condition of Hamlet. Mr. Carter finds that there are six different theories, but he has failed to define clearly more than three. According to the first one—which the author calls the Individualistic Theory—the corporation is regarded as an association of individuals, and the rights and duties of the corporation are regarded as in reality the rights and duties of the persons who compose it. This theory is absolutely inconsistent with the great weight of English and American law, and in the vast majority of cases could not be applied without defeating the intentions of the parties and the very purpose of the statutes authorizing the creation of corporations, and causing great injustice. A second theory—which the author calls the Realistic Conception—is a comparatively modern one and owes its origin to the intensive thinking of some German jurists. This is the theory of the *"Gesammtperson"*, according to which the corporate being is thought of as a real person with a mind and will of its own. This theory is neither sensible nor just, nor in accordance with the facts. Obviously, when A. B. and C., who have been carrying on their business as a partnership, form a corporation for the purpose of carrying on the same business, they do not form a distinct person with a will and mind of its own. They are simply recognized by the law as a unit. And their rights and liabilities, which during their partnership the law regarded as the joint rights and liabilities of themselves as individuals, are regarded after the formation of the corporation as the rights and liabilities of the corporation, just *as if it were* a distinct person separate and apart from the individuals composing it. But this, of course, is not to say that *it is* a distinct person in the sense of a living being. It is merely a conception for the purpose of giving effect to the intention of the parties, just like the conception of implied conditions in Contracts or the doctrine of relation in the Law of Agency and Decedents' Estates. And because this conception does give effect to the intention of the parties, like the doctrines of ratification and relation, it is a just and sensible one and should be consistently applied. This is known as the theory of the Juristic Person or Corporate Entity and it has rarely presented any difficulty to the practical minds of Anglo-American judges. Nor was it a conception which gave the Roman lawyers any difficulty, although strangely enough Mr. Carter states that the theory that was fostered in the Roman law was the Individualistic Theory. The Roman lawyers had a very firm grasp of the corporate entity theory, which was clearly expressed in the well-known phrase: *"Si quid universitati*

debetur, non singulis debetur; nec quod debet universitas singuli non debent."

The author states: "In language, the courts seldom do disregard their fiction. In fact, they do constantly disregard it (p. 57)." It is submitted that exactly the reverse is true. In modern times, the courts glibly talk of the corporate entity as a mere fiction which may be disregarded in the sound discretion of the court, but the actual decisions are for the most part entirely consistent with it. In the case of *State ex rel.* v. *Standard Oil Co.* (1892) 49 Oh. St. 137, 30 N. E. 279, to which Mr. Carter refers, the court states, among other things: "All fictions of law have been introduced for the purpose of convenience and to subserve the ends of justice. It is in this sense that the maxim *in fictione juris subsistit aequitas* is used and the doctrine of fictions applied. But when they are urged to an intent and purpose not within the reason and policy of the fiction, they have always been disregarded by the courts."

The court further stated that the corporate entity was a fiction of this kind and could be ignored, and then proceeded to render a decision which was entirely consistent with the entity theory properly understood. The fact is that in nearly all the cases where the courts have spoken in this way, the entity has not in fact been ignored. And, on the other hand, in a few cases where the entity was ignored, complete justice could have been done under a strict adherence to the theory.

Mr. Carter, while he has not succeeded in throwing any new light on the legal nature of the corporation, has given an interesting and readable exposition of this fundamental problem. But his study has a defect not uncommon in the case of essays presented for the doctorate degree. It is entirely too diffuse. And this is really an unpardonable sin in these days when, with the multiplication of statute law and decisions, it is so essential to compress rather than to expand the volume of matter which lawyers are compelled to read.

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